DATO' SRI MOHD NAJIB HJ ABDUL RAZAK v. PP

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED ZAINI MAZLAN J
[CRIMINAL APPLICATION NO: WA-44-108-06-2020]
30 MARCH 2021

CRIMINAL PROCEDURE: *Prosecution – Prosecuting officer – Deputy Public Prosecutor ('DPP') – Appointment of, whether legally tainted – Whether DPP biased or entertained preconceived notions about accused's guilt – Whether involved in investigation of cases against accused – Whether having mala fide intents – Whether to be disqualified – Criminal Procedure Code, s. 376(3) – Federal Constitution, art. 145(3)*

This was an application to challenge the legality of the appointment of a Senior Deputy Public Prosecutor ('GSR', otherwise 'Senior DPP') and to disqualify him from prosecuting the cases against the applicant on the grounds that GSR was biased, had preconceived notions of the applicant's guilt and had displayed *mala fide* intents against the applicant. It was not disputed that the applicant was the former Prime Minister, and that GSR, an advocate and solicitor and a former Federal Court Judge, was appointed as an *ad hoc* prosecutor by the Public Prosecutor and the Attorney General ('TT') pursuant to s. 376(3) of the Criminal Procedure Code to prosecute the cases in question.

Before the judge herein, the applicant contended that GSR's appointment was legally tainted as, apart from prosecuting, GSR was also involved in the investigation process of the cases. Further, in his meeting and discussion with TT's predecessor ('MAA'), GSR was said to have referred to the applicant as 'Criminal Najib' thereby prejudging the applicant's guilt and showing his lack of detachment from the cases. It was also argued that GSR was a potential witness in the cases and allowing him to prosecute would offend r. 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978. The prosecution retorted that the application was an abuse of process, as attempts had previously been made by the applicant and his counsel before other judges to disqualify GSR on patently the same grounds but failed. It was further argued that GSR's visit to MAA was done in a professional capacity to advise MAA to arrest the applicant and nothing more, and that the advice given was legally privileged.

Held (dismissing application):

(1) While prosecutors should not partake in the actual investigation process of a case, it would be quite inaccurate to state that they are not at all involved in such process. Their role, however, is limited to merely directing the relevant investigating authorities to conduct further investigations if the need arises. (para 24)

(2) The statements by TT and in GSR's letter of appointment on GSR's involvement in the investigation process was due to poor choice of words than anything else. Such intent, if any, had not been carried out and GSR had denied any such involvement. The court had no reason to doubt GSR's denial. In any case, since there was no evidence proffered to suggest otherwise, the accusations against GSR remained purely hypothetical. Indeed, this issue should not have been regurgitated as it had been canvassed and decided by other courts. (para 28)

(3) The applicant's apprehension of GSR's views and biasness was untenable. The meeting between MAA and GSR and the WhatsApp conversation that took place was well before GSR's appointment as the Senior DPP. It was a private conversation and that was his view then. GSR was entitled to have his personal opinion so long as it did not impinge on his duties, and so long as he was not openly biased when acting as a Senior DPP. (paras 35 & 37)

(4) GSR was merely a cog in the wheel as a Senior DPP and it would be a disservice to the Attorney General's Chambers and its officers to suggest that GSR alone would have absolute control over the prosecution of the applicant and could manipulate the conduct of the prosecution's case to fit his agenda. Ultimately, it is for the court to ensure that the applicant is afforded his constitutional rights to a fair trial. (para 38)

Case(s) referred to:
Dato' Sri Mohd Najib Hj Abdul Razak v. PP [2019] 1 LNS 1837 CA ***(refd)***
MG v. R [2007] NSWCCA 57 ***(refd)***
Muhammad Shafee Md Abdullah v. PP [2019] 1 LNS 844 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 376(3)
Federal Constitution, art. 145(3)
Legal Profession (Practice and Etiquette) Rules 1978, r. 28(a)

For the applicant - Shafee Abdullah & Nur Syahirah Hanapiah; M/s Shafee & Co
For the respondent - Ahmad Akram Gharib, Mohamad Mustaffa, P Kunyalam, Rozaliana Zakaria, Nadia Zulkefli & Nur Syakirin Yaccob; DPPs

Reported by Wan Sharif Ahmad

JUDGMENT

Mohamed Zaini Mazlan J:

Introduction

[1] The applicant sought to declare that Datuk Seri Gopal Sri Ram's ("GSR") appointment as a Senior Deputy Public Prosecutor under s. 376(3) of the Criminal Procedure Code, conflicted with his practise as an advocate

and solicitor of the High Court of Malaya and that he had displayed bias and *mala fide* by having pre-conceived and pre-determined notions of the applicant's guilt even before he was charged in court.

[2] Consequential to these declarations, the applicant seeks to have GSR disqualified from continuing to act as a Senior Deputy Public Prosecutor, or act on behalf of the Public Prosecutor in five cases involving him in the Kuala Lumpur High Court.

Facts

[3] The applicant was the nation's sixth Prime Minister. His tenure ended after the 14th General Election in 2018. He then faced several criminal charges. He claimed that these were the outcome of a political conspiracy by his political rivals in the new Government. The cases are ongoing, save for one which had been recently concluded. His grievance lies with GSR's appointment as the Senior Deputy Public Prosecutor for the ongoing cases.[1]

[4] GSR[2], an advocate and solicitor, was appointed as a Senior Deputy Public Prosecutor by the former Attorney General, Tan Sri Tommy Thomas ("TT")[3]. He was assigned to take conduct of the prosecution against personalities allegedly involved in the fraudulent deals of the 1Malaysia Development Bhd group of companies. The applicant was one of them. GSR's appointment was made known publicly through amongst others, the former Attorney General's media release. The Attorney General's Chambers had also executed a letter of appointment to give effect to the appointment.

[5] GSR had since taken conduct of some of the cases against the applicant, assisted by Deputy Public Prosecutors from the Attorney General's Chambers, and the Malaysian-Anti Corruption Commission.

The Application

[6] The two main grievances of the applicant were that GSR had been involved in the investigation process of the cases against the applicant and that he had already adjudged the applicant's guilt, which is evident from the discussions that GSR had with TT's predecessor, Tan Sri Mohamed Apandi Ali[4] ("MAA").

The Investigation Allegation

[7] The applicant referred to several factors to substantiate his allegation. The first was the media release released by the Attorney General's Chambers dated 31 August 2018, when TT was the Attorney General. The relevant excerpt is as follows:

A

5. It is public knowledge that investigation papers (IPs) into the numerous fraudulent deals connected to the 1MDB affair have not been submitted to Chambers by the MACC and the police (save for one IP concerning Jho Low, which resulted in charges and the issue of warrants of arrest against him and his father last week). Upon receipt of the IPs from the investigating agencies, this office is required to study them, prepare charges and prosecute the alleged accused at trial. In order to spearhead this entire process, I am pleased to announce the appointment of Datuk Seri Gopal Sri Ram as Senior Deputy Public Prosecutor pursuant to Section 376(3) of the CPC.

B

C

6. Datuk Seri Sri Ram, a retired Federal Court Judge, has returned to active practise. He has substantial experience in criminal law matters. His strong and determined personality will no doubt enhance **the investigation** and prosecution in all matters pertaining to the 1MDB scandal. (emphasis added)

D

[8] The second was GSR's letter of appointment from the Attorney General's Chambers dated 30 August 2018. The relevant excerpt of that letter is as follows:

Re: 1MDB Prosecution

E

In the exercise of my discretion under Section 376(3) of the Criminal Procedure Code, I am pleased to appoint you as Senior Deputy Public Prosecutor **to spearhead the investigation** of numerous fraudulent deals connected with the affairs of 1 Malaysia Development Berhad ("1MDB") Group of companies and the prosecution of the principal personalities responsible for such massive fraud. Your services would include:

F

a) Working with the relevant Investigation Agencies with a view of urgently securing Investigation Papers ("IPs") from them;

b) Studying all IPs that will be submitted by the various Investigating Agencies to Chambers;

c) Drafting criminal charges;

G

d) Prosecuting the accused in Court; and

e) Attending to post trial tasks, such as the preparation of written submissions, until delivery of decision by the court.

(emphasis added)

H

[9] The applicant in alluding to the media statement and letter of appointment, forcefully contended that there is a clear case of conflict of interest, as GSR had been appointed to both investigate and prosecute the cases against him. It was highlighted that the roles of a Public and Deputy Public Prosecutor are set out in the Federal Constitution and the Criminal

I

Procedure Code and that none of these roles allows them to be involved in the investigation process. The applicant alleged that GSR had been actively engaged in directing and supervising the investigation undertaken by the relevant authorities, and contended that GSR's involvement in the investigation process conflicted with his role as a prosecutor in the cases against him. The applicant also contended that GSR could therefore be a potential witness and that this would run foul of r. 28(a) of the Legal Profession (Practice and Etiquette) Rules 1978, which prohibits an advocate and solicitor from appearing in a case where he could be a witness.

[10] The respondent submitted that the applicant's allegation was not novel, as this was not his first attempt to disqualify GSR as the Senior Deputy Public Prosecutor based on the same reason. The first application, *vide* Criminal Application No. WA-44-211-12-2018, which was pursued up to the Federal Court, had failed. The applicant had also filed a judicial review application *vide* Application No. WA-25-377-12-2018 at the High Court, seeking to nullify GSR's appointment. That application too had been dismissed by the High Court.

[11] The respondent also highlighted that the applicant's counsel, Tan Sri Shafee Abdullah, who is also facing a criminal charge, had made a similar application to disqualify GSR as the Senior Deputy Public Prosecutor in his case, relying on the same ground. That application was heard by Justice Collin Lawrence Sequerah and had also been dismissed[5].

[12] All these courts concluded that there was no evidence to prove that GSR had been involved in the investigation process against the applicant. The respondent submitted that the regurgitation of this issue amounts to an abuse of the court's process.

That GSR Is Bias

[13] GSR had met up with MAA at the latter's house sometime in January 2018. MAA was still the serving Attorney General then. MAA revealed his version of what transpired in the meeting through a posting on his Facebook[6] on 10 June 2020. GSR did not come alone. He was accompanied by another lawyer named Tey Jun Ren @ JR Tey. MAA's spouse, Puan Sri Faridah Begum, was also present in this meeting. These facts are not disputed. Both MAA and his wife had also affirmed an affidavit to relate their version of the meeting. GSR however had his version.

[14] MAA claimed that GSR had initially attempted to persuade him to unfreeze a client's bank account, to enable GSR to be paid his fees. MAA claimed that he was not persuaded. MAA then claimed that GSR revealed that he had a bigger agenda to discuss, as he was sent by Tun Dr Mahathir Mohamad[7] ("Tun Mahathir") to see him.

[15] According to MAA, GSR told him that Tun Mahathir wanted the applicant arrested the next day and that arrangements have been made with the police, and for a Magistrate to issue a remand order. GSR then told him that the public had been unhappy and frustrated and that he would make them happy by arresting the applicant. GSR had also allegedly attempted to cajole MAA further by stating that the arrest would be heroic, as he would be the first Attorney General to arrest a sitting Prime Minister.

[16] MAA had before this meeting, cleared the applicant from any wrongdoings, after considering the investigation papers submitted by the Malaysian Anti-Corruption Commission. This was in January 2016. The decision not to take any action against the applicant was conveyed through the Attorney General's Chamber's media release. It was therefore public knowledge.

[17] The respondent responded through GSR's affidavit. GSR claimed to have visited MAA in a professional capacity, and that he had rendered advise which is legally privileged. He denied MAA's version, save for having advised MAA to arrest the applicant, as there was sufficient evidence in the public domain. GSR reproduced the WhatsApp[8] conversation between him and MAA, that he claimed would shed light on what had transpired. MAA confirmed the veracity of the WhatsApp transcript. The relevant transcript of the WhatsApp conversation is as follows:

> [12/05/2018, 5:20:48PM] Apandi Ali Judge: Bro.. Have I been sacked as AG? I just saw on a news portal. Officially I am in the dark. Thank you.
>
> [12/05/2018, 5:22:12PM] Sri Ram: I have heard nothing. Must be fake news. *You know Tun M. It is not his style.*
>
> [12/05/2018, 5:24:42PM] Apandi Ali Judge: thank you Bro... anything do let me know. I am much obliged.
>
> [12/05/2018, 5:25:04PM] Sri Ram: Not a problem Brother.
>
> [12/05/2018, 5:26:41PM] Apandi Ali Judge: Tiada Peguam Negara buat masa ini! – Tun M http://www.mstar.com.my berita/semasa/2018/05/12/tiada-peguam-negara/#RM5CddYPmmsECT4h.41
>
> [12/05/2018, 5:26:59PM] Apandi Ali Judge: That's the news Bro..
>
> [12/05/2018, 5:28:50PM] Sri Ram: Brother, this has all the features of fake news.
>
> [12/05/2018, 5:29:56PM] Apandi Ali Judge: I hope so. Even the Palace is unaware.
>
> [12/05/2018, 5:33:40PM] Sri Ram: Brother just carry on and do your job. Don't be distracted. *I really wish you had followed my advice and charged that criminal Najib. Anyway he and his wife are certain to face the music.*

[12/05/2018, 5:37:12PM] Apandi Ali Judge: I just acted based on the contents of the investigation Papers as submitted by the relevant agencies ... the records are all there.

[12/05/2018, 5:38:29PM] Sri Ram: *I know. But the fact that monies found in his account alone was sufficient to charge him.*

[12/05/2018, 5:45:53PM] Apandi Ali Judge: that is in respect of the 2.6 which was investigated by MAGG, of which the (sic) were sufficient explanation that satisfied the investigation agency. MAGG came out twice with press statements exculpating him ...

[12/05/2018, 7:09:37PM] Sri Ram: *Yes. But a prosecutor is not concerned with the defence version. All he needs is prima facie evidence of a crime. Once that is made out it is for the accused to give his explanation to the Court. Though MAGG may purport to clear a suspect it is for the Public Prosecutor to charge if the statements of the A witnesses show a case. The statements of B witnesses do not matter to determine whether there is a prima facie case.* That is my humble opinion. ... (emphasis added)

[18] MAA referred to the WhatsApp conversation in his affidavit-in-reply. He claimed to have been surprised with GSR's contention that the fact that monies were found in the applicant's bank account was sufficient to charge him. MAA opined that GSR's approach was unreasonable, particularly as he was formerly a judge of the Federal Court and currently an eminent counsel, as there was a myriad of factors that a prosecutor would need to carefully consider before charging anyone. He took great exception to GSR's views in the last message posted, and averred that "I have never heard of such a jaundiced view from the mouth of such purportedly an experienced person". MAA did not reply to GSR's last message and concluded that GSR was clearly biased and had an agenda towards the applicant.

[19] The applicant contended that it was evident from the meet up between MAA and GSR that the latter had the intention to have him arrested and prosecuted, and that he had from the onset been bias towards him. The applicant dismissed GSR's version of the meet up and alleged that his averments were merely hearsay and uncorroborated. It was pointed out that GSR had gone to MAA's house with another lawyer named JR Tey, and it was therefore incumbent on him to get JR Tey to affirm an affidavit to corroborate his version. This is in contrast to MAA, whose version was corroborated by his wife's affidavit. It was submitted that GSR's affidavit should be deemed inconsequential without JR Tey's corroboration.

[20] The applicant contended that GSR had displayed biasness against him even before he was roped in to lead the prosecution's team. The applicant alluded to GSR's attempt to persuade MAA during the meeting and the WhatsApp content between the two to support this point. That GSR had

alluded to the applicant as "Criminal Najib" lends credence to the applicant's belief of GSR's lack of detachment and biasness. These traits, the applicant contended, are not the qualities expected of a prosecutor, which are fair-minded, impartial and objective. The applicant is as such doubtful that he will be tried fairly.

[21] The applicant surmised that GSR's biasness against him would lead the public into concluding that justice was not being done and that he would be denied a right to a fair trial, as he was being prosecuted by a prosecutor that had shown an overwhelming biasness towards him.

[22] The respondent argued that the applicant's hypothesis on the meeting and WhatsApp messages between MAA and GSR are far-fetched, as the applicant was still the sitting Prime Minister then, and MAA the Attorney General, compared to GSR who was merely a legal practitioner, and Tun Mahathir a former Prime Minister. It was contended that it was illogical for GSR to instruct MAA, the Attorney General, to arrest the applicant on the instructions of a veteran politician. The applicant had only ceased being the Prime Minister after the general elections in May 2018. That being the case, GSR could not have foreseen the fall of the applicant, let alone him being charged and GSR being appointed as a Senior Deputy Public Prosecutor.

[23] As for the WhatsApp conversation, the respondent submitted that the conversation must be read as a whole and not in parts. The tone of the conversation suggests that GSR was merely consoling MAA, whom he deemed as a close friend and a former colleague in the Federal Court, upon learning of his untimely departure as an Attorney General with the change of Government. The respondent argued that the views that GSR had expressed regarding the applicant were merely his personal views. The respondent alleged that it was MAA who had demonstrated an apparent biasness towards the applicant, as the fact shows that the applicant was subsequently charged over several offences when MAA had refused to do so when he was the Attorney General.

Findings

That GSR Was Involved In The Investigation

[24] The powers of the Public Prosecutor are indeed wide, but not without limits. Their powers and jurisdiction in respect of the control and direction of criminal proceedings are succinctly set out under art. 145(3) of the Federal Constitution, and s. 376 of the Criminal Procedure Code. It would be quite inaccurate to state that prosecutors are not involved at all in the investigation process, but what has been widely misunderstood is the extent of their involvement. Their role at the investigative stage is merely to direct the relevant investigating authorities to conduct further investigations if the need

arises. It is incumbent on them to ensure that there is sufficient evidence for them to analyse, and subsequently decide whether to institute criminal proceedings or otherwise. Prosecutors however do not and should not partake in the actual investigation process, lest they become partial to the outcome. The criminal justice system requires a separation of duties between those who investigate and those who prosecute. Prosecutors should not be persecutors.

[25] This issue has indeed been ventilated and decided in the first application until its conclusion in the apex court, and also before Justice Sequerah. The applicant is now attempting to ventilate the same argument here, not in the same breath but most certainly in the same flavour.

[26] The applicant had in the first application relied on the media release by TT, and his interview to a few news agencies. TT in the interview was even quoted to have said that GSR was involved in the final stages of investigations. The Court of Appeal's judgment on this issue in the first application is instructive[9]. The appellate court took the view that the statements do not prove that GSR had been involved in the investigative process. The court elaborated on the distinct investigative duties of the relevant authorities, and the prosecutorial duties of the prosecution[10]. In gist, the relevant authority entrusted to investigate will upon completing their task submit the investigation papers to the prosecutors. It is for the prosecutors to then determine whether to charge the person investigated. The prosecutors however are empowered to direct the investigating officers to do further investigations, if some matters would need further evidence. That is all, as the prosecutors do not take part in the investigations. The Court of Appeal held that TT's statement of GSR's involvement with the investigation process was merely in a supervisory role accustomed to prosecutors. The appellate court also held that the applicant's allegations were bare assertions and that there were no materials before the court to support his allegations.

[27] Similarly, Justice Sequerah too held the same view and found the allegations unsubstantiated. Unlike the first application, His Lordship had to deal with GSR's letter of appointment, which states that GSR was to have conduct and supervision over the investigation process. His Lordship concluded that GSR could not have been involved in the investigative process as the applicant had been investigated by the Malaysian Anti-Corruption Commission in 2015, where else GSR was only appointed in August 2018[11].

[28] I am mindful of the fact that the statements by TT and the contents of GSR's letter of appointment state that GSR is to be involved in the investigations. It was perhaps a poor choice of words, and in hindsight could have been drafted or said better. What is pertinent however is to show that

the intent, if at all that was the case, was acted upon. GSR has denied being involved in the investigation process. I find no reason to doubt his denial, as there is no convincing evidence proffered by the applicant to suggest otherwise. The applicant must produce the evidence to substantiate his allegations, and not merely hurl accusations based on perceptions. I, therefore, find the applicant's allegation that GSR had been involved in the investigations against him unmeritorious. There is no cogent evidence to support the applicant's allegation, and it remains purely hypothetical. This issue had in any event been canvassed by the applicant in the previous applications highlighted by the respondent. It is a moot point. It has been deliberated and decided. The decisions held by the other courts should remain. This issue should not be regurgitated again.

The Allegation Of Biasness

[29] The applicant seemed to have heavily relied on MAA's version of the meeting between him and GSR to prove GSR's pre-conceived view on the applicant's guilt. He also sought to rely on the WhatsApp conversation between MAA and GSR to drive home this point, particularly on GSR referring to him as the "Criminal Najib". The applicant highlighted that the Attorney General's Chambers had only decided to charge him after further investigations were conducted and that this was done after MAA had resigned as the Attorney General. The applicant contended that GSR was biased towards him, as he had already prejudged his guilt before he was even charged. The applicant is quite simply put, convinced that GSR has an agenda against him.

[30] The applicant sought to rely on the Australian case of *MG v. R*[12]. This case makes for an interesting read, as the court discussed at great length the standards expected of prosecutors in handling criminal trials. The applicant was tried for allegedly participating in a series of brutal sexual assaults on the victim over a lengthy period. This case had generated much public interest and discourse, as the victim was raped 25 times by 14 men over six hours. It was one of Sydney's worst gang rape cases.

[31] The applicant had sought for several orders, but the one that concerns this case is his application to restrain the Crown Prosecutor, Ms Cunneen, from further representing the Crown in the proceedings against him, and that another prosecutor is appointed in her stead. Ms Cunneen had made some public statements about the case, which demonstrated her considerable sympathy for the victim and frustration towards what she perceived to be a criminal justice system that weighed favourably towards the accused persons. In considering the applicant's application, the court was of the view that the test is whether:

> … a fair minded reasonably informed member of the public would conclude that the proper administration of justice requires that a legal practitioner should be prevented from acting, in the interests of the protection of the integrity of the judicial process and the due administration of justice, including the appearance of justice[13].

[32] The court unanimously held that Ms Cunneen's public statements had compromised her capacity to prosecute the case against the applicant fairly, as it demonstrated a lack of detachment from the case that she was required to prosecute. The applicant's application to have Ms Cunneen be replaced as Crown Prosecutor for his case was allowed.

[33] The applicant opined that the impact of GSR's appointment as the Senior Deputy Public Prosecutor was more serious compared to Ms Cunneen's case, as he had already prejudged the applicant's guilt.

[34] I will first address the applicant's contention to put little value on GSR's version of events in his affidavits, as unlike MAA, who had his wife to support his version with her affidavit, GSR did not have JR Tey's affidavit to support his version, as they came together. I do not think that GSR needed to have his averments corroborated by JR Tey. Quantity does not make for veracity. It would suffice for the versions put by parties in their affidavits to be analysed with the circumstances of the case.

[35] I have done so, and am of the opinion that the applicant's apprehension of GSR's views and biasness is untenable. GSR like any other person is entitled to have his personal opinion. It remains just that. It would have been a different consideration if he had demonstrated his biasness when carrying out his duty as a Senior Deputy Public Prosecutor. His personal opinion does not impinge on his duties as a prosecutor. He, like any other person, is entitled to form his own opinion, provided that his view is not made public, for that would then set forth the test of whether it would lead to a fair minded reasonably informed person to conclude that the prosecution would be directed to vindicating his personal view. It is perfectly reasonable to hold a personal view. The crucial test is whether he was openly biased when acting as a Senior Deputy Public Prosecutor.

[36] The court in *MG v. R* (*supra*) had emphasised that it would have been fine for Ms Cunneen to hold the view complained of in private, but it became an issue when her view was made publicly. The pertinent segments of the judgment are as follows:

> There are further matters. By speaking publicly as she did Ms Cunneen revealed here considerable sympathy for the complainant in her ordeal. **That Ms Cunneen, or any person, should hold those views is understandable.** However, by **publicly expressing them,** and at the same time mounting an argument that the criminal justice system was both weighted inappropriately in favour of accused persons and imposed unacceptable burdens on complainants, Ms Cunneen discarded the prosecutor's obligation of detachment.[14]
>
> ...

> The statements which Ms Cunneen made have a number of consequences. They demonstrate a lack of detachment from the case she was required to prosecute. **There is no difficulty in Ms Cunneen privately holding the view that the applicant is guilty.** However, her **public expression** of that view displayed partiality and potentially compromised her capacity to prosecute on behalf of the Crown. It had the consequence that a fair minded person might reasonably conclude that her conduct of the prosecution would be directed to vindicating her publicly expressed view. When a prosecutor on a **public occasion** expresses the view that a person is guilty, although they have not been tried according to law, the latter prosecution of that person by that prosecutor tends toward oppression which is the antithesis of a fair trial.[15]
>
> (emphasis added)

[37] In any event, the meeting between MAA and GSR and the WhatsApp conversation took place well before GSR was appointed as the Senior Deputy Public Prosecutor. That was his views then. It was moreover a private conversation. The applicant's application would have more force if these events had taken place after GSR had been appointed.

[38] Prosecutors are not representatives of the complainants or victims. They represent the State, namely the interest of the public, and is entrusted to assist the court by presenting an unbiased presentation of the facts and evidence, untrammelled with fear or favour. GSR is merely a cog in the wheel as a Senior Deputy Public Prosecutor. It would be a great disservice to the Attorney General's Chambers and its officers to suggest that GSR alone have absolute control over the prosecution of the applicant and could manipulate the conduct of the prosecution's case to fit his agenda, more so when the prosecution's team consists of other Deputy Public Prosecutors. The general conduct of the criminal proceedings would still be under the purview of the Public Prosecutor and his officers.

Conclusion

[39] I agree with the respondent's contention that it is ultimately for the courts to ensure that the applicant is afforded his constitutional rights to a fair trial. This brings to mind the eminent Lord Denning's remark in his book "*The Family Story*"[16] where he stated, "Someone must be trusted. Let it be the judges". A judge's role in an adversarial system such as ours is to hold a balance between the parties in dispute. It is ultimately the court's bounden duty to ensure that a trial is conducted fairly in the interests of justice. The court will ultimately come to the aid of any party that was treated unfairly, if it ever comes to that.

[40] I find the grounds submitted by the applicant unmeritorious. The applicant's application is therefore dismissed.

Endnotes:

1. Case Nos: WA-45-7-11-2018; WA-45-8-11-2018; WA-45-10-12-2018; WA-45-6-02-2019; WA-45-1-04-2019 and WA-45-12-10-2019.
2. He was formerly a judge of the Federal Court. He retired in February 2010.
3. He served as the Attorney General from 2018 to 2020.
4. He was the Attorney General from 27 July 2015 to 4 June 2018. He was also formerly a judge in the Federal Court. He retired in 2015.
5. The judgment is reported in *Muhammad Shafee Md Abdullah v. PP* [2019] 1 LNS 844 (HC).
6. A social networking website.
7. Malaysia's fourth and seventh Prime Minister.
8. A multi-platform messaging application that is commonly used in mobile phones.
9. *Dato' Sri Mohd Najib Hj Abdul Razak v. PP* [2019] 1 LNS 1837 (CA).
10. At para. 73.
11. Paragraphs 133 to 139.
12. [2007] NSWCCA 57.
13. At para. 73.
14. Paragraph 92.
15. Paragraph 86.
16. Published 28 December 1981 by Lexis Law Publishing (VA).